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SENATE BILL 486

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO SPECIAL DISTRICTS; LIMITING THE POWERS OF CERTAIN
CONSERVANCY DISTRICTS OVER ACEQUIAS AND COMMUNITY DITCHES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 73-14-39 NMSA 1978 (being Laws 1927,
Chapter 45, Section 308) is amended to read:

"73-14-39. GENERAL POWERS.--

~~[(1)]~~ A. Except as provided in Subsection D of this section, in order to protect life and property within the district, and to protect or relieve land subject to overflow or washing or which is menaced or threatened by the normal flow of flood or surplus or overflow waters of any natural water course, stream, canyon, arroyo or wash, whether perennial, intermittent or flood, and in order to effect the protection of life, land and other property in the district, and to

underscored material = new
[bracketed material] = delete

1 accomplish all other purposes of the district, the board is
2 authorized and empowered:

3 (1) to clean out, straighten, widen, alter,
4 deepen or change the course or terminus of any ditch, community
5 ditch or acequia, drain, sewer, flume, river, water course,
6 pond, lake, creek, arroyo or natural or artificial stream in or
7 out of [~~said~~] the district; to fill up any abandoned or altered
8 ditch, community ditch or acequia, drain, sewer, river, flume,
9 water course, pond, lake, creek, arroyo or natural or
10 artificial stream, and to concentrate, divert or divide the
11 flow of water in or out of [~~said~~] the district; and to
12 construct and maintain main and lateral ditches, community
13 ditches or acequias, sewers, canals, flumes, levees, dikes,
14 dams, sluices, revetments, reservoirs or retarding basins,
15 floodways, wells, pumping stations and [~~siphons~~] siphons and
16 any other works and improvements deemed necessary to construct,
17 preserve, operate or maintain the works in or out of [~~said~~] the
18 district;

19 (2) to construct, reconstruct or enlarge or
20 cause to be constructed, reconstructed or enlarged any and all
21 bridges that may be needed in or out of [~~said~~] the district;

22 (3) to construct, reconstruct or elevate
23 highways and streets;

24 (4) to construct or reconstruct any and all of
25 [~~said~~] the works and improvements along, across, through or

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1 over any public highway, canal, railroad right of way, track,
2 grade, fill or cut, in or out of [~~said~~] the district; to remove
3 or change the location of any fence, building, railroad, canal
4 or other improvements in or out of [~~said~~] the district; and
5 shall have the right to acquire by donation, purchase or
6 condemnation; to construct, own, lease, use and sell; and to
7 hold, encumber, control and maintain any easement, water right,
8 acequias, well, railroad right of way, canal, sluice, flume,
9 reservoir site, reservoir or retarding basin, mill dam, water
10 power, franchise, park, cemetery or any other public way or
11 place or any real or personal property, public or private, in
12 or out of [~~said~~] the district, for rights of way and such other
13 things or for materials of construction or for any other use
14 not inconsistent with the purposes of [~~this~~] the Conservancy
15 Act; and

16 (5) to replot or subdivide land, to open new
17 roads, highways, parks, streets and alleys, or to change the
18 location of existing ones [~~and provided, further, that~~].

19 B. Except as provided in Subsection D of this
20 section, in [~~case~~] the event that the construction provided by
21 the official plan interferes with an irrigation ditch,
22 community ditch or acequia or other works used for applying
23 water to beneficial use, the district shall make equivalent
24 provision by means of ditches or works constructed by the
25 district at its expense for supplying [~~such~~] the water to

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[bracketed material] = delete

1 [such] the water users to the extent that [~~the same~~] it was
2 being lawfully obtained and used through such ditches or works.

3 C. The district shall have the right to increase at
4 its expense the storage capacity of any reservoirs and to store
5 [~~therein~~] in them or release [~~therefrom~~] from them water in
6 excess of the capacity of [such] the reservoirs as developed by
7 any person; but [such] the additional storage so created by the
8 district shall not interfere with the storage and regulation of
9 flow of water as developed by [such] that person prior to
10 [such] the increased storage capacity being added by the
11 district [~~and, that~~]. In [~~ease~~] the event that the district
12 [~~shall increase~~] increases the storage capacity of any [such]
13 reservoir, either by adding to the dam, dams or other
14 structures built, or by removing [such] the dam, dams or other
15 structures and rebuilding [~~same~~] them, the damages, if any, to
16 [such] the person for the property so utilized or removed shall
17 be ascertained and paid as provided in the case of property
18 taken by the district by right of eminent domain.

19 D. A conservancy district that includes within its
20 boundaries a class A county with a population greater than five
21 hundred thousand according to the most recent federal decennial
22 census shall not have power, jurisdiction or control over an
23 acequia or community ditch within its boundaries."

24 Section 2. Section 73-14-49 NMSA 1978 (being Laws 1951,
25 Chapter 222, Section 1) is amended to read:

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underscored material = new
[bracketed material] = delete

1 "73-14-49. DECLARATION OF POLICY.--It is recognized that
2 in conservancy districts [~~heretofore or hereafter~~] organized
3 under New Mexico law that certain land [~~therein~~] in the state
4 has or may have vested irrigation water rights. While fully
5 recognizing such rights, nevertheless, in the proper operation
6 of [~~such~~] the districts, and especially in time of droughts, it
7 is essential that the districts have the specific and
8 unquestioned power to distribute the water remaining available
9 for irrigation and to properly allocate [~~the same~~] it for the
10 purposes most essential for the welfare and economy of
11 landowners within the district. To this end, the legislature
12 deems it of manifest importance that conservancy districts have
13 the unquestioned power to make such distribution and allocation
14 of irrigation waters. While such power is present in existing
15 laws, the method of enforcement is doubtful. To avoid any
16 question in the future, [~~this act is~~] Sections 73-14-49 through
17 73-14-53 NMSA 1978 are enacted, with [~~the aforesaid~~] that
18 legislative intent and policy in mind; provided, however, that
19 a conservancy district that includes within its boundaries a
20 class A county with a population greater than five hundred
21 thousand according to the most recent federal decennial census
22 is not intended to have power, jurisdiction or control over an
23 acequia or community ditch within its boundaries."

24 Section 3. Section 73-14-50 NMSA 1978 (being Laws 1951,
25 Chapter 222, Section 2) is amended to read:

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1 "73-14-50. DISTRIBUTION OF IRRIGATION WATERS.--

2 A. Except as provided in Subsection B of this
3 section, all conservancy districts [heretofore] previously
4 organized under the laws of New Mexico and all such districts
5 hereafter to be organized are specifically empowered to make
6 [such] proper and necessary distribution and allocation of the
7 waters available for irrigation within [such] the districts as
8 the boards of directors [thereof] of them, in consultation with
9 the chief engineer of [such] the districts, shall determine to
10 be reasonable and proper. The method and manner of
11 distribution and allocation may be altered and changed as often
12 as is deemed requisite. The [decision] decisions of [said
13 board] the boards of directors, as determined from time to
14 time, shall be expressed in rules and regulations to be adopted
15 and published as [hereinbelow] specified in Section 73-14-51
16 NMSA 1978.

17 B. A conservancy district that includes within its
18 boundaries a class A county with a population greater than five
19 hundred thousand according to the most recent federal decennial
20 census shall not have power, jurisdiction or control over an
21 acequia or community ditch within its boundaries."

22 Section 4. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is January 1, 2010.